

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT 08

Reference No: IACDT 009/23

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| IN THE MATTER | of a referral under s 48 of the Immigration Advisers Licensing Act 2007 |
| BY | THE REGISTRAR OF IMMIGRATION ADVISERS Registrar |
| BETWEEN | MT Complainant |
| AND | NIRMALA KRISHNA MURTHY Adviser |

Decision on the papers

SUBJECT TO SUPPRESSION ORDER

DECISION
(Sanctions)
Dated 21 February 2024

REPRESENTATION:
Registrar: Self-represented
Complainant: Self-represented
Adviser: Self-represented

INTRODUCTION

[1] The complainant's husband (the client) entered New Zealand without disclosing criminal convictions. He was served with a deportation order and departed New Zealand. The complainant later engaged the adviser to obtain a visa, but the adviser made errors and breached numerous professional obligations.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 11 January 2024 in *MT v Murthy*.¹ Ms Murthy was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[3] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

[4] The narrative leading to the complaint is set out in the earlier decision and will only be briefly summarised here.

[5] Nirmala Krishna Murthy (the adviser) is a licensed immigration adviser and director of Immigration Consultancies Ltd, of Auckland (the immigration company).

[6] MT (the complainant) is a New Zealand citizen married to SI (the client), a citizen of Lebanon. He entered New Zealand in 2012 without disclosing his criminal history. Following the issue of a deportation order, he departed in 2015.

[7] Ms Murthy was engaged in June 2021. An application for a partnership visa was filed with Immigration New Zealand (Immigration NZ) on 28 July 2021. It was refused on 1 October 2021.

[8] The complainant requested a partial refund on 4 October 2021 and it was made by Ms Murthy on 22 October. On 14 December 2021, the complainant sent an email to Ms Murthy expressing unhappiness about her work and seeking a further refund. Ms Murthy replied declining a refund.

Decision of the Tribunal

[9] It was found by the Tribunal that Ms Murthy had:

¹ *MT v Murthy* [2024] NZIACDT 3.

- (1) Failed to ensure the name and licence number of her son, also a licensed immigration adviser who worked on the file, were written in the service contract, in breach of cl 19(a).
- (2) Failed to include payment terms in the service contract, in breach of cl 19(i).
- (3) Failed to ensure the refund clause in the service contract complied with the Code, in breach of cl 24(a).
- (4) Failed to recognize that the advance payment –
 - (i) remained the property of the complainant until payable and invoiced, in breach of cl 25(a);
 - (ii) should be kept in a separate client account, in breach of cl 25(b);
 - (iii) should only be withdrawn when the fees are payable and invoiced, in breach of cl 25(e); and
 - (iv) should only be used for the purpose for which it was paid to Ms Murthy, in breach of cl 25(f).
- (5) Failed to provide file notes in the client file, in breach of cl 26(a)(iii).
- (6) Failed to confirm material discussions in writing with the complainant, in breach of cl 26(c).
- (7) Failed to maintain a well-managed filing system, in breach of cl 26(d).
- (8) Failed to ensure Immigration NZ's form 1025 was complete before filing with Immigration NZ, in breach of cl 1.
- (9) Failed to ensure the correct Australian Federal Police certificate was provided to Immigration NZ, in breach of cl 1.

SUBMISSIONS

Submissions from the Registrar

[10] There are submissions (25 January 2024) from Ms Issar of the Registrar's office. It is noted that this is Ms Murthy's fifth appearance before the Tribunal. Ms Issar invites the Tribunal to focus on the breadth of the wrongdoing. There were numerous breaches, though they relate to a single client, concern a relatively narrow issue and arose over a

relatively short period of time. The most serious breach was the mismanagement of funds received by the client. The Tribunal is invited to consider whether Ms Murthy's conduct might be indicative of an overall comprehensive disregard of, or inattention to, professional standards. The magnitude and reach of such disregard or inattention is aggravated and broadened by her past instances of misconduct.

[11] The Tribunal's attention is drawn to s 3 of the Act, setting out the purpose of the Act, namely protecting the interests of consumers. This is a key purpose of sanctions.

[12] It is submitted that the wrongdoing could be described as being towards the higher end of the moderate level. Ms Murthy's conduct is disquieting. She has repeatedly and consistently breached the Code, not only in the present matter but in other matters involving different clients. While such circumstances may ordinarily attract higher end sanctions, the Registrar acknowledges:

- (1) Ms Murthy has accepted the misconduct.
- (2) It relates to activity in 2021.
- (3) Since the misconduct, she has completed a course of training. She has not yet had the chance to demonstrate an ability to adhere to the Code after completing the course of study.
- (4) Ms Murthy has promised to adhere to professional standards in the future.

[13] The consistency of the breaches may indicate a lack of sufficient knowledge and/or training. Ms Murthy received her full licence before the qualification for advisers was available. A substantive formal qualification may be beneficial to her. However, at this time, the Registrar does not seek an order for further training as the completion of the training earlier directed by the Tribunal post-dated her misconduct.

[14] The Registrar submits the appropriate penalties would be:

- (1) Censure.
- (2) A penalty in the vicinity of \$4,000 to \$5,000.
- (3) The repayment of fees, expenses or compensation as deemed reasonable by the Tribunal.

From the complainant

[15] In her submissions (26 January 2024), the complainant says she suffered substantial financial losses because of Ms Murthy's conduct, as she struggled with rent and living costs during the pandemic. After receiving Immigration NZ's decision declining a visa, she had to sell the contents of the house and move overseas. The losses were:

| | |
|-------------------------------------|----------|
| Resident visa fee (Immigration NZ) | \$ 3,610 |
| Visitor visa fee | \$ 215 |
| Household contents | \$20,000 |
| Engaging another adviser | |
| – resident application fee | \$ 5,500 |
| Ms Murthy – visitor visa fee | \$ 2,875 |
| New document fees | \$ 1,000 |
| Learning fees – special needs child | \$ 8,000 |
| Flights – return to Lebanon | \$24,658 |
| Hotel costs while in transit | \$ 500 |

[16] There was also substantial emotional stress. The complainant eagerly awaited emails on the outcome of her husband's visa application, but there was barely any communication or updates. Ms Murthy was absent in helping them. She was falsely optimistic and lacked honesty. She did not explain the difficulties they would face during the application process. Since the decision, the complainant has been melancholy and having breakdowns of sadness and emotion, due to the stress of the outcome. She worries about how she can be with her husband again.

From Ms Murthy

[17] In her submissions (31 January 2024), Ms Murthy acknowledges the Tribunal's findings and expresses her sincere regret at the professional lapses. She has since completed the LAWS 7015 paper at Toi Ohomai Institute of Technology, significantly enhancing her understanding of and compliance with the Code. She highlights the proactive measures taken since to rectify the issues:

- (1) Reviewed and updated the service agreement.
- (2) Established a trust account. Fees are paid into this account and remain untouched until the service is complete and an invoice is issued.

[18] Ms Murthy states she is committed to maintaining the highest standards of professional conduct going forward. Given her commitment to rectify past mistakes and

the ongoing financial challenges due to the pandemic, which have significantly reduced her revenue, Ms Murthy respectfully requests that censure and a minimal fine would be a fitting and manageable response in the circumstances.

JURISDICTION

[19] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following actions:²

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[20] The sanctions that may be imposed are set out at s 51(1) of the Act:

51 Disciplinary sanctions

(1) The sanctions that the Tribunal may impose are—

- (a) caution or censure:
- (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
- (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
- (d) cancellation of licence:
- (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
- (f) an order for the payment of a penalty not exceeding \$10,000:
- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:

² Immigration Advisers Licensing Act 2007.

- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[21] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[22] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Zideman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[23] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the collective reputation and public confidence in the profession itself.⁴

[24] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁵

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[25] The most appropriate penalty is that which:⁶

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[26] The misconduct found here is detailed above. There were 12 breaches by Ms Murthy of her professional obligations. They included an inadequate service contract, inadequate file keeping, inadequate communications with the complainant and a failure to ensure complete and accurate supporting documents for the partnership visa application. The Tribunal agrees with Ms Issar that the most serious breaches concerned managing an advance payment by the complainant, though no deceit was involved. The Tribunal further accepts the Registrar's classification of the wrongdoing as the higher end of moderate, given the high number of breaches.

[27] As the Registrar notes, this is the fifth complaint against Ms Murthy upheld by the Tribunal.

[28] In the *LS* decision on 4 April 2022,⁷ Ms Murthy was found by the Tribunal to have:

- (1) Failed to confirm in writing to the client when she lodged an assessment application with NZQA, in breach of cl 26(b) of the Code.

⁶ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51]; and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

⁷ *LS v Murthy* [2022] NZIACDT 5.

- (2) Failed to confirm in writing to the client when her services were terminated, in breach of cl 28(a).

[29] The conduct occurred in August 2020. It was found to be at the lower end of the scale and the only sanction was a caution.⁸

[30] In the *SU* decision on 18 July 2022,⁹ Ms Murthy was found to have:

- (1) Filed an assessment application with NZQA late (she took 2.5 months for a straight-forward application), in breach of the obligation to exercise diligence and due care in cl 1 of the Code.
- (2) Failed to have a written contract for a work visa application, in breach of cl 18(a).
- (3) Failed to confirm in writing to her client the termination of her services in relation to the work visa, in breach of cl 28(a).
- (4) Failed to confirm in writing to her client the details of material discussions, in breach of cl 26(c).

[31] The conduct occurred between June and November 2020. The Tribunal found it could not be described as serious. It noted that while there was some explanation in her health, the Registrar was correct to contend that there was a pattern of casual compliance with her 'paperwork' obligations. The sanctions were censure, completion of LAWS 7015 at Toi Ohomai, payment of a penalty of \$1,500 and compensation to the client of \$3,553.¹⁰

[32] In the *NG* decision on 15 March 2023, Ms Murthy was found to have:¹¹

- (1) Failed to lodge an information request with Immigration NZ seeking her then client's immigration records, breaching the obligation of diligence and due care in cl 1 of the Code.
- (2) Failed to provide her client with the opportunity to review either of two s 61 requests prior to their lodgement, in breach of the obligation of diligence and due care in cl 1.

⁸ *LS v Murthy* [2022] NZIACDT 12.

⁹ *SU v Murthy* [2022] NZIACDT 17.

¹⁰ *SU v Murthy* [2022] NZIACDT 22.

¹¹ *NG v Murthy* [2023] NZIACDT 10.

- (3) Failed to provide a written agreement for a second s 61 request, in breach of cl 18(a).

[33] The conduct occurred between July and December 2021. The Tribunal said the conduct was not, of itself, serious. The sanctions were censure, a penalty of \$2,000 and a refund of \$2,200.¹²

[34] In *BC v Murthy*,¹³ Ms Murthy was found to have:

- (1) Failed to make a prompt refund, in breach of cl 24(c) of the Code.
- (2) Failed to recognise that the client's funds remained his property until payable and invoiced, in breach of cl 25(a).
- (3) Failed to withdraw the client's funds only when payable and invoiced, in breach of cl 25(e).
- (4) Failed to provide the Authority with a complete client file, in breach of cl 26(e).
- (5) Failed to maintain a well-managed filing system, in breach of cl 26(d).
- (6) Failed to confirm in writing to the client all material discussions, in breach of cl 26(c).
- (7) Failed to confirm to the client when an expression of interest was filed and to provide timely updates, in breach of cl 26(b).
- (8) Failed to inform Immigration NZ that she was no longer representing the client, in breach of cl 28(b).

[35] The conduct occurred from late 2020 through 2021. The Tribunal regarded the conduct as moderate. The sanctions were censure and a financial penalty of \$3,500.¹⁴

[36] The Tribunal will now consider the potential sanctions in the current case.

¹² *NG v Murthy* [2023] NZIACDT 17.

¹³ *BC v Murthy* [2023] NZIACDT 8.

¹⁴ *BC v Murthy* [2023] NZIACDT 19.

Caution or censure

[37] The misconduct here, notably the failure to deal appropriately with client money which should have been held in a trust account, is sufficiently serious to be marked by censure. Ms Murthy does not dispute this is an appropriate sanction.

Training

[38] The Tribunal agrees with the Registrar that it is not necessary, at the moment, to require further training. Ms Murthy has recently completed the paper she was directed to undertake in an earlier decision of the Tribunal. The wrongdoing here occurred before that training was undertaken. She says that training has significantly enhanced her understanding of the Code.

Financial penalty

[39] There were 12 breaches of the Code, four bordering the serious end of the spectrum. This is the fifth complaint upheld, involving a total of 29 breaches of the Code. The previous financial penalties were \$1,500, \$2,000 and \$3,500. The Registrar submits a penalty of \$4,000 to \$5,000 would be appropriate. Ms Murthy requests a minimal fine, pointing out her financial challenges.

[40] Ms Murthy is to be given credit for acknowledging her wrongdoing and implementing changes to her practice as a result of the recent training. However, the Tribunal cannot overlook her systemic wrongdoing. Given Ms Murthy's poor disciplinary record, the penalty will be \$6,000.

Refund and compensation

[41] Ms Murthy's contracted fee was \$5,750 (incl. GST). The total in fees paid by the complainant was \$2,875 (paid on 2 June 2021) and \$1,600 (paid on about 22 August 2021), of which Ms Murthy refunded \$1,600 (on 22 October 2021). On 14 December 2021, the complainant sought a refund of \$1,800. In her complaint to the Authority (27 June 2023), the complainant sought a refund of half of "the fees". In her submissions to the Tribunal (26 January 2024), the complainant asks for \$2,875 as an item of compensation.

[42] While Ms Murthy does not address in her submissions the request for compensation (including a refund of the fee paid to her), it would not be reasonable to refund all the fees paid despite the failure of the visa application. That is because the

visa was not declined because of any shortcoming of Ms Murthy. It was declined because Immigration NZ did not accept the client's relationship with the complainant was genuine and stable. The filing of an incomplete form 1025 by Ms Murthy was merely a secondary reason for Immigration NZ's decline of the visa. However, given the breadth of Ms Murthy's professional failures, it is appropriate to direct the refund of half the fee paid, the sum of \$1,438.

[43] As for the compensation sought, it would not be reasonable to order Ms Murthy to reimburse any of it (beyond the partial refund). As noted already, she was not primarily responsible for the decline of the application. Her failure made a minor contribution to the decline only. The consequential financial burden and stresses on the complainant were not caused by any of Ms Murthy's wrongdoing upheld by the Tribunal. It was Immigration NZ's decision which led to the complainant and her daughter going to Lebanon with the client, not any professional misconduct. The costs associated with this travel or the sale of their furniture are not the responsibility of Ms Murthy. The emotional stress is understandable, but is caused by Immigration NZ's decision, not any professional wrongs.

OUTCOME

[44] Ms Murthy is:

- (1) Censured.
- (2) Ordered to pay \$6,000 to the Registrar within one month.
- (3) Ordered to pay \$1,438 to the complainant within one month.

ORDER FOR SUPPRESSION

[45] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁵ It must balance the privacy of the individuals named with the transparency of the Tribunal (requiring public knowledge of the wrongdoing of advisers and of the Tribunal's jurisprudence).

[46] There is no public interest in knowing the name of Ms Murthy's client, or the complainant.

¹⁵ Immigration Advisers Licensing Act, s 50A.

[47] The Tribunal orders that no information identifying the client or the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair